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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/248,057	02/10/1999	TUAN BUI	62492	8350

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EXAMINER

THISSELL, JEREMY

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 03/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/248,057

Applicant(s)

BUI ET AL.

Examiner

Jeremy T. Thissell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,8-13,18-21,24 and 26-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-13,18-21,24 and 26-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: the acronym "LCD" should be written out completely as "liquid crystal display (LCD)" once before the abbreviation is used in the claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102 or 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 8, 9, 11, 12, 18-21, 24, 26, 30, and 33-36 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wallace et al (US 6,024,089).

Wallace teaches all the claimed subject matter including a device that selectively displays controller buttons on a touch screen display according to status of the medical device. Wallace also teaches that the controller is remote from the medical device and teaches that the controller has memory, status indicators, and a display (see figure 2;

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col. 2, lines 66-67; col. 3, lines 31-46; col. 5, line 64-col. 6, line 13; and col. 9, line 63-col. 10, line 4).

Wallace broadly teaches that the controller buttons are selectively displayed. If applicant does not agree that this encompasses all phases of control or programming, the examiner takes the position that it would have been obvious to extend such selective displays to all phases in order to provide the user with a less complicated interface in each phase.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al.

Wallace teaches all the claimed subject matter except for the display being an LCD and for the controller being a personal computer. Although Wallace does not explicitly state that the display can be an LCD, the examiner takes the position that LCD's are every bit as common as other displays such as CRT's (conventional computer monitors) and it would have been obvious to one of ordinary skill in the art to substitute one for the other.

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Wallace teaches a substantial amount of computer componentry in col. 5, line 64-col. 6, line 12. In view of Wallace's use of so much equipment common to personal computers, one of ordinary skill in the art would have found it obvious that a personal computer would be suitable for use as the controller unit in Wallace.

Claims 3, 13, 27, 28, 31, and 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace in view of Lynch et al (US 5,885,245).

Wallace teaches all the claimed subject matter except for the medical device being a liquid infusion pump, and the controller having different display settings in memory, which are used based on recognition of different medical devices.

Wallace teaches that the medical device controlled is a ventilator, which of course pumps gas (which is a fluid) into the body. Lynch teaches a similarly controlled device wherein the medical device infuses liquid into the body. Since both devices pump fluids into the body, the examiner takes the position that one of ordinary skill in the art would have found it obvious to use the controller device of Wallace with a liquid infusion pump as taught by Lynch in order to reap the benefits of the simplified display keys during use of a liquid infusion pump.

Lynch also teaches that the device has memory that stores display settings for different liquid infusion pumps (col. 9, lines 23-38). Again, since the devices are so similar in their function, the examiner takes the position that one of ordinary skill in the art would have found it obvious to incorporate the memory settings (as taught by Lynch) for multiple ventilators into the device of Wallace in order to make the controller more

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versatile and/or universal by making it compatible with many different kinds of ventilators.

### ***Response to Arguments***

Applicant's arguments filed 27 December 2001 have been fully considered but they are not persuasive.

Applicant added the limitation that the selective key displays are during each phase of control or programming. The examiner addressed this limitation in the rejections above.

Applicant also argued that the controller in Wallace is not "remote". However, the controller 20 in Wallace (figure 1) is every bit as remote as claimed by applicant. Although applicant argues that Wallace does not teach the controller being connected to the ventilator via modem etc, these connections are not claimed. Further, if they were claimed, Wallace would likely meet those limitations since the controller is connected to the ventilator via electrical cables, which is what a modem uses.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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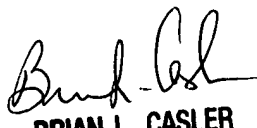
**Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy T. Thissell whose telephone number is (703) 305-5261. The examiner can normally be reached on 8:30-7:00 Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached at (703) 308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jt  
March 5, 2002

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



**Attachment for PTO-948 (Rev. 03/01, or earlier)**  
**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.